

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FARHAN MOHAMMED,
Plaintiff,

vs.

DAVIS COUNTY, County in Utah, and
JOSHUA BOUCHER, an individual,
Defendants.

MEMORANDUM DECISION AND
ORDER DENYING PLAINTIFF'S
MOTION FOR DEFAULT
JUDGMENT AND GRANTING
DEFENDANTS' MOTION TO
QUASH SERVICE

Case No. 2:07-CV-637 TS

This matter is before the Court on Defendants' Motion to Quash Service and Plaintiff's Motion for Default Judgment. For the reasons set forth below, the Court will deny Plaintiff's Motion for Default Judgment and grant Defendants' Motion to Quash.

I. BACKGROUND

Plaintiff filed the instant action against the Davis County Sheriff's Office on August 27, 2007.¹ That same day, he obtained a Summons from the Clerk of the Court which listed the

¹Docket No. 1.

Davis County Attorney's Office as the defendant.² It appears that the Summons was never served. On December 26, 2007, Defendant filed an Amended Complaint naming Davis County and Joshua Boucher as Defendants, and removing the Davis County Sheriff's Office as a Defendant.³ It appears that Defendant then changed the Summons issued on August 27, 2007, to list the Davis County Clerk and Joshua Boucher as defendants.⁴ The Summons and Amended Complaint were served on Defendant Davis County by delivering and leaving a copy of the Summons and Amended Complaint with the Davis County Clerk on December 28, 2007.⁵ That same day the Summons and Amended Complaint were served on Defendant Boucher by delivering to and leaving a copy with Sgt. Hietala at the Davis County Sheriff's Office.⁶

On January 16, 2007, Defendants Davis County and Joshua Boucher filed a Motion to Quash Service arguing that the Summons was not properly issued by the Clerk of the Court and that service on Defendant Boucher was improper.⁷ Plaintiff did not respond to Defendants' Motion, but instead filed a Motion for Default Judgment.⁸ Defendants oppose Plaintiff's Motion. As Plaintiff is proceeding pro se, the Court will construe his pleadings and filings liberally.⁹

²Docket No. 4, Exhibit 1.

³Docket No. 3.

⁴Docket No. 4, Exhibit 1.

⁵Docket No. 6, Exhibit 1.

⁶*Id.*

⁷Docket No. 4.

⁸Docket No. 6.

⁹*Jackson v. United States*, 2007 WL 3209985, *1, n.1 (citing *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972)).

II. DISCUSSION

A. MOTION FOR DEFAULT JUDGMENT

Federal Rule of Civil Procedure 55(a) provides that “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Plaintiff has not shown that default judgment is appropriate here. Within 20 days after being served with the Summons and Amended Complaint, Defendants filed a motion under Federal Rule of Civil Procedure 12(b) seeking to quash service. Thus, Defendants have not failed to plead or otherwise defend and Plaintiff’s Motion will be denied.

B. MOTION TO QUASH

Federal Rule of Civil Procedure 4(a) sets forth the necessary contents of a summons, which include, among others, the requirement that the summons must name the parties and be directed to the defendant. Rule 4(a) also provides that “[t]he court may permit a summons to be amended.” Here, the Summons that was issued on August 27, 2007, was defective in that it did not name the parties listed in the Amended Complaint and was not properly directed to Defendants. As a result, the Court will quash service of the Summons, but will allow amendment of the Summons.

Plaintiff is directed to obtain a new summons—one that complies with the requirements of Fed.R.Civ.P. 4(a)—from the Clerk of the Court. Plaintiff is also directed that he must serve that summons and the Amended Complaint on Defendants within thirty (30) days of this Order. Plaintiff must comply with the requirements Fed.R.Civ.P. 4 when serving Defendants.

III. CONCLUSION

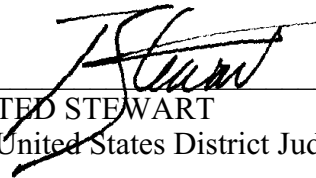
It is therefore

ORDERED that Plaintiff's Motion for Default Judgment (Docket No. 6) is DENIED. It is further

ORDERED that Defendants' Motion to Quash Service (Docket No. 4) is GRANTED. Plaintiff must obtain an amended summons from the Clerk of the Court and serve the summons and Amended Complaint upon Defendants within thirty (30) days of this Order.

DATED March 11, 2008.

BY THE COURT:



TED STEWART
United States District Judge